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Brussels Tax Bulletin

April 2019

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Will It Or Won't It? New departure time for FTT set for May ECOFIN but serious doubts remain

by Danny O'Connell, Associate Director at Kreab

Discussions on the Financial Transaction Tax (FTT) have trundled on for over 6 years with no sign of agreement despite numerous false alerts. It is with some skepticism therefore that recent news was greeted that France and Germany were on the verge of a breakthrough which would provide final agreement on the FTT in time for the 17 May ECOFIN.

We have heard these reports of an imminent agreement many times in the past, and of course the promised deal never materialized. What is different this time around? For a start, the group of 10 (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain) agreed back in December 2018 that they would pursue a new approach with a much narrower scope based on the French domestic FTT.

There has been little tangible progress since then however. Significantly, we are still waiting for a new legal text to be produced. What has happened in the last few months is that there were several meetings of the group of 10, both at political and technical level. Most recently, technical experts from the participating Member States met on Monday 8th April.

At this meeting, we understand that technical experts from the group of 10 examined the French domestic FTT (on which the new EU FTT will be based) and how this could be applied on an EU-10 basis. The meeting also focused on the issue of mutualisation of tax-take, i.e. revenues raised under an FTT would be offset against respective contributions of the Member States to the EU/Eurozone budget in line with Member States' respective share of Gross National Income (GNI). Nevertheless, there is still no consensus on how to do this.

The work on mutualisation will now feed into the wider debate on the EU budget. Discussions on the Multiannual Financial Framework will continue at technical level until mid-May with the European Council scheduled to examine this issue on 20-21 June.

This mutualisation question is itself a controversial topic. Research carried out by the European Commission and released in March showed that by effectively compensating the smaller Member States in the group of 10 (by allowing reductions from national contributions to the EU budget to be based on GNI rather than actual revenue under the tax), France, Germany and Spain would all be net losers. All other Member States would be net winners under the approach.

The argument in favour of this is simple however. If the larger Member States don't pick up this shortfall, then it would not be worthwhile introducing the tax for smaller Member States as it would cost more to implement than it would bring in. The same research also indicated that the estimated revenue collected under the FTT would be roughly €3.5 billion, far lower than estimates under the original wider scope.

In terms of what is happening now, Austria is reportedly continuing to work on the legal text with assistance from the Commission and France. Austria has previously held the informal chair of the group. The group of 10 will then present the new legal text at the 17 May ECOFIN.

So how likely are we to see an agreement or something close to an agreement in a few weeks time? Those with a long memory will put the chances at slim. Just last month Commission officials reportedly expressed scepticism regarding the ability to easily turn the high-level approach put forward in December into a new legal text.

Even if we do see a legal text which is acceptable to the group of 10 and legally sound, that will still not resolve the issue of mutualisation. It is notable that this sudden urge to move forward with the FTT negotiations comes on the home-straight of the upcoming elections to the European Parliament in May, where Eurosceptic and populist parties are predicted to make gains in most Member States. The FTT is something that will clearly resonate with voters, even if the reality is that introducing such a tax is a long way off.

QMV In Tax

In January of this year the European Commission released its Communication entitled "towards a more efficient and democratic decision making in EU tax policy" which raised the prospect of introducing a new legislative procedure for tax law using qualified majority voting (QMV) instead of the current unanimity requirement in Council. Needless to say, this did not receive the full backing of Member States and the February ECOFIN saw a strong push back from several quarters.

Nevertheless, the European Commission is persevering and continues to raise the prospect of using QMV for tax as a means to address the problems we currently face in Europe. On the 9th April, the Commission published a Communication on a more efficient and democratic decision making in EU energy and climate policy. The Communication proposes to move to QMV in energy taxation and argues that this is necessary to allow the EU to meet its targets on energy and climate change. It notes that the failure of the proposed carbon tax was due to the unanimity rule in Council.

More recently, on 15 April, the European Parliament discussed the failure of the proposed Digital Services Tax (DST). Vice-President Valdis Dombrovskis stated that the failure of the DST proposal was largely explained by the unanimity rule which he described as another example where unanimity has hampered progress needed to strengthen the single market. A purely national approach taxation no longer works, he argued. But all is not lost, Mr. Dombrovskis explained and pointed to the EU work acting as a template for national taxes and a pre-cursor for work at the international level. The EU will also continue its discussion on introducing QMV for taxation, going forward.

Although the Parliament session was very poorly attended, there was a strong consensus amongst those MEPs present that QMV in tax should be introduced and introduced urgently. It was notable that this view was held across different political groups. Othmar Karas (EPP, AT) said he could not accept the unfairness of technology companies paying very little rates of tax and said the failure of the proposal was due to tax havens within the EU combined with the unanimity rule. He called for an end to the "blockade" of unanimity on taxation.

Paul Tang (S&D, NL) highlighted the need to move away from unanimity and said it was time for Member States to consider introducing domestic digital taxes. Sven Giegold (Greens, DE) said Germany had a big role to play in the failure of the DST and voters should bear this in mind when it comes to the elections. On a notable political tone, Mr. Giegold also argued that German Finance Minister Olaf Scholz is wrong if he thinks he can appease Trump and negotiate at an international level.

The views of the MEPs across the political groups stands in stark contrast to the views of Member States within the Council. Of course, this is something we have seen recently with the final report of the TAX 3 Committee in the European Parliament where MEPs of different nationalities and from different political groups were all in agreement on the need for far-reaching tax reforms, despite their own political party colleagues back in their respective jurisdictions taking a completely opposite approach on the same issues.

One thing is for sure, while QMV in tax is unlikely to be implemented within the next Commission mandate, the January Communication has succeeded in stoking a fiery debate and this is unlikely to go away anytime soon.

Possible Tax Priorities for the New European Commission

As we approach the end of the current Parliamentary term, the European Commission's term is not far behind and we will see a new batch of Commissioners take up office in November. The current European Commission has achieved a considerable degree of success in completing tax proposals (certainly compared to its previous term) and it is unclear how exactly the new Commission can build upon this. While the areas for focus are clear, it seems that the Commission's vaulting ambition has come up against the sober pragmatism of the Council, and this barrier appears insurmountable.

What can we reasonably expect from the new Commission in terms of tax focus? To a certain degree, it all depends on who gets in, which in turn depends on who gets elected to the European Parliament in May elections. Some polls suggest that there could even be a Commissioner from the Green Party in the new Commission. We could therefore witness a much more dogged approach to fighting climate change which would naturally translate into everything from tax law to sustainable finance. Even if the Commissioner were in charge of Environmental policy only, it would make financial services and taxation files much more difficult to get through the College of Commissioners in the first place.

The think-tank, European Policy Centre has recently released its paper on what it believes should be the policies of the new European Commission. It highlights social issues including the international fight against tax fraud and restoring tax fairness as a central theme. It states that "bold and honest initiatives are needed to restore tax fairness" while the EU must lead in tackling tax havens and "strengthening pan-European tax coordination, and target extremely wealthy citizens and global companies (such as big tech) able to exploit tax loopholes and bank secrecy." It also points towards the proposals on a Common Consolidated Corporate Tax Base (CCCTB) and Qualified Majority Voting (QMV) as being two specific actions to be progressed.

This is entirely foreseeable and it should come as no surprise if the new Commission will try and link up all these different topics, stressing the need for QMV in order to fight climate change and shore up public budgets in light of the growth of the digital economy.

Apart from these dossiers, it's likely that the new Commission will also try to foster a single, coherent EU voice in the tax discussions taking place at OECD level in order to ensure that the EU (and not simply the individual Member States) are a force to be reckoned with alongside the USA and China.

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